IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3254 of 2005

Ramdas Laxman Ghadage & ors. Petitioners
Vs.
Sidheswar Tukaram Pustake and Ors. Respondents

Mr.Uday Warunjikar for petitioners.
Mr.Dilip Bodke for respondents

CORAM: B.H.MARLAPALLE,J.
June 14, 2006.

P.C.

. Heard Mr.Warunjikar, the learned counsel for the petitioners-plaintiffs and Mr.Bodke for the respondents-defendants in RCS No.163 of 2004. This petition is limited to the extent of challenge to the orders passed by both the Courts below rejecting the application for temporary injunction filed at Exhibit 5 in the said suit.

. The suit properties are agricultural lands and residential premises. The agricultural land is from Gat Nos.233, 139, 981, 983 and 985 of village Borgaon (Takle), Tal. Koregaon, Dist. Satara. The plaintiffs claim that when they had instituted the suit in the month of November 2004, they were in possession of the suit land and were in fact cultivating the same.

. The defendants on the other hand had contended that the suit land was sold to them by Smt.Shakuntalabai by an agreement for sale dated 11/2/1997, they had paid an amount of Rs.4,00,000/- by way of earnest money to Smt.Shakuntalabai and were put in possession of the suit land which had come to her share by way of partition decree in Regular Civil Suit No.87 of 1966.

. Both the Courts below have recorded a prima facie finding that the plaintiffs failed to convince that they were in possession of the suit land and they were cultivating the same when the suit was instituted. Mr.Warunjikar, the learned counsel for the petitioners referred to the documentary evidence viz. the 7/12 extracts of the suit lands for the agricultural year 2003-04 and the affidavits of the neighbouring land holders. So far as 7/12 extracts are concerned, both the Courts below concurrently discarded the same for the simple reason that on the demise of Shakuntalabai on 22/8/2004 the names of the plaintiffs came to be recorded by Entry No.2669 in the Gat numbers and Shakuntalabai died issueless. The 7/12 extract does show that prior to her death the names of the plaintiffs or at least two of them

i.e. Ramdas and Sanjay were not shown in the cultivating column. It has also been noted by the Courts below that Mutation Entry No.2669 has been challenged in RTS Appeal No.39 of 2004 before the SDO who was pleased to stay the operation of the said entry.

. The Courts below referred to the affidavits and while not relying upon the same for the purpose of possession of the plaintiffs over the suit lands referred to the decree of partition passed in favour of Shakuntalabai and the fact that she was staying separately from the plaintiffs. This view taken by the Courts below cannot be termed as perverse or grossly erroneous so as to cause interference in the impugned orders and more so when right from November 2004 there is no injunction operating in favour of the plaintiffs.

. The petition is, therefore, rejected summarily and it is directed that Regular Civil Suit No.163 of 2004 be heard and decided expeditiously.

(B.H.MARLAPALLE,J.)